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No. 95-555

In the
Supreme Court of the United States

October Term 1995

MATTHEW E. JACKSON, JR.

Petitioner,

v.

OFFICE OF DISCIPLINARY COUNSEL

Respondent.

On Petition For Writ of Certiorari To
The Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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Supreme Court of Pennsylvania

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I. COUNTER-STATEMENT OF QUESTION PRESENTED

Should the Court deny certiorari to review the Order of the Supreme Court of Pennsylvania suspending Petitioner from the Bar of the Commonwealth for one year and one day, where the issues presented in the Petition for Writ of Certiorari were not appropriately raised, argued or considered in the disciplinary proceedings before the Supreme Court of Pennsylvania, its Disciplinary Board or Hearing Committee.

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RESPONDENT'S BRIEF IN OPPOSITION

IV. COUNTER-STATEMENT ON JURISDICTION

Because the Petitioner did not appropriately raise or argue any substantial federal questions with respect to the Order of the Pennsylvania Supreme Court suspending Petitioner from the Bar of the Commonwealth for one year and one day, before the Pennsylvania Supreme Court, its Disciplinary Board or Hearing Committee, the questions presented for review set forth in the Petition for Writ of Certiorari are not properly before the Court for review under 28 U.S.C. §1257 (a).

V. STATEMENT OF THE CASE

On September 6, 1990, Judith Hunt filed a complaint with the Office of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania, alleging disciplinary violations by Petitioner. An investigation of that complaint ensued, and on September 17, 1993, Respondent filed a Petition for Discipline at No. 81 DB 93 with the Disciplinary Board, alleging various violations by Petitioner of the Rules of Professional Conduct. No answer was filed by Petitioner within the prescribed time. On November 1, 1993, the matter was referred to a Hearing Committee for a disciplinary hearing. A hearing in the matter was originally scheduled for December 16, 1993, but was continued and rescheduled for March 18, 1994. Petitioner received notification of that hearing on January 31, 1994.

On March 18, 1994, the Hearing Committee and Respondent appeared, as scheduled, for the disciplinary hearing. At 9:56 a.m., on that date, Respondent was personally served with Petitioner's Petition for Extraordinary Relief, and an accompanying cover letter addressed to the Hearing Committee. That letter alleged that the Petition for Extraordinary Relief had been filed by Petitioner with the Supreme Court of Pennsylvania on that date. Petitioner did not appear, nor did he contact the Hearing Committee to request a continuance. The Hearing Committee attempted to contact the Petitioner, without success. Upon determining that, in fact, the Petition for Extraordinary Relief had not been filed with the Supreme Court of Pennsylvania, the Hearing Committee moved forward and the hearing on the Petition for Discipline was held.

At the conclusion of the testimony presented, the Hearing Committee found a prima facie violation of at least one of the charged Rules of Professional Conduct. At the conclusion of the hearing, the Hearing Committee announced that the record would remain open for ten days, and requested that Respondent so notify Petitioner.

Attempts were made to notify Petitioner, and he was finally personally served with a letter to that effect on March 23, 1993. As the Petition for Extraordinary Relief had not yet been filed, at the expiration of the ten-day period, on March 29, 1994, Respondent requested the Hearing Committee close the record. On March 30, 1994, the Petition for Extraordinary Relief was filed by Petitioner with the Supreme Court of Pennsylvania. On March 31, 1994, by Order of the Hearing Committee, the record was closed.

Respondent filed an Answer to the Petition for Extraordinary Relief on April 12, 1994. On May 20, 1994, by Per Curiam Order, the Supreme Court of Pennsylvania denied Petitioner's Petition for extraordinary Relief. On that same date, Respondent filed a Brief to the Hearing Committee. Petitioner filed his brief to the Hearing Committee on June 30, 1994.

On September 8, 1994, the Hearing Committee filed its Report with the Disciplinary Board. In its Report, the Hearing Committee found that Petitioner had violated three separate Rules of Professional Conduct, and recommended a public censure. Respondent submitted a letter advising that no exceptions would be filed to the Hearing Committee Report. On October 11, 1994, Petitioner filed a Brief on Exceptions to the Report of the Hearing Committee and, under separate cover, requested oral argument. Respondent filed a Brief Opposing Exceptions on November 1, 1994, and Petitioner filed a Reply Brief.

A panel of the Disciplinary Board heard oral argument on the matter on December 15, 1994. The matter was adjudicated at the December 16, 1994 meeting of the Disciplinary Board. On July 27, 1995, the Disciplinary Board submitted to the Supreme Court of Pennsylvania its Report and Recommendations in the matter. In its Report, the Disciplinary Board found that Petitioner had violated the Rules of Professional Conduct in question, and recommended to the Court that Petitioner be suspended from the practice of law for one

year and one day. Petitioner did not file with the Supreme Court of Pennsylvania a Petition for review of the Disciplinary Board's Report and Recommendations within the prescribed period of time. On August 31, 1995, the Supreme Court of Pennsylvania issued a Per Curiam Order suspending Petitioner from the Bar of the Commonwealth for a period of one year and one day.

VI. SUMMARY OF ARGUMENT

The Court should not grant certiorari to review the Order of the Pennsylvania Supreme Court suspending Petitioner from the Bar of the Commonwealth for one year and one day because the Petitioner has not appropriately raised or preserved any substantial federal question for review.

Under Supreme Court Rule 14.1 (h), the Petitioner is required to specify at what stage of the proceedings in the Pennsylvania Supreme Court he raised the federal questions he now seeks to have reviewed, the manner in which he raised them and the way in which they were passed upon by the Pennsylvania Supreme Court. The Petitioner did not address any of these issues. He could not have discussed them in his Petition for Writ of Certiorari because he never appropriately raised or argued any federal question at any stage of the proceedings, including before the Pennsylvania Supreme Court. As a consequence, the Pennsylvania Supreme Court has not ruled on any constitutional issue or other substantial federal claim. Therefore, no federal constitutional issue or substantial federal claim is properly before the Court for review.

VII. ARGUMENT

THE COURT SHOULD DENY CERTIORARI TO REVIEW THE ORDER OF THE SUPREME COURT OF PENNSYLVANIA SUSPENDING PETITIONER FROM THE BAR OF THE COMMONWEALTH FOR ONE YEAR AND ONE DAY WHERE THE ISSUES PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI WERE NOT APPROPRIATELY RAISED, ARGUED OR CONSIDERED IN THE DISCIPLINARY PROCEEDINGS BEFORE THE SUPREME COURT OF PENNSYLVANIA, ITS DISCIPLINARY BOARD OR HEARING COMMITTEE.

Initially, it must be pointed out that Respondent's investigation and prosecution of the disciplinary complaint filed against Petitioner was not in response to his allegations made in his federal lawsuit, filed at U.S.D.C.W.Pa. No. 92-CV-1223. The disciplinary proceeding, resulting in the suspension of Petitioner from the Bar of the Commonwealth of Pennsylvania for one year and one day, was not a retaliatory action; rather it was based on Petitioner's serious violations of the Rules of Professional Conduct, and the pattern of misconduct indicated thereby. The entire investigation and prosecution of the allegations against Petitioner was undertaken pursuant to the Pennsylvania Rules of Disciplinary Enforcement and the Disciplinary Board Rules, promulgated and adopted by the Supreme Court of Pennsylvania. Respondent did not engage in any professional or personal harassment of Petitioner, nor did Respondent violate any state or federal constitutional rights of Petitioner. Further, any allegations regarding the actual suspension of Petitioner's license would more appropriately involve the Supreme Court of Pennsylvania as the opposing party, since it is the only entity empowered to suspend or revoke that license.

Review on Writ of Certiorari is not a matter of right, but of jurisdictional discretion, and will be granted only when there are special and important reasons therefor. Supreme Court Rule 10. Under 28 U.S.C. §1257 (a), this Court has jurisdiction to review the final judgment of the Pennsylvania Supreme Court where that judgment involves the denial of any federal constitutional right or privilege. However, where the alleged infringement of the constitutional right or privilege was not appropriately raised, argued or considered in the proceedings below, your jurisdiction should not be exercised. *Heath v. Alabama*, 474 U.S. 82 (1985); *Illinois v. Gates*, 462 U.S. 213 (1983); *Cardinale v. Louisiana*, 394 U.S. 437 (1969); *State Farm Mutual Insurance Company v. Duel*, 324 U.S. 154 (1945); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430 (1940).

For this Court to review a state court judgment on Writ of Certiorari, the federal question sought to be reviewed must have been timely and properly raised in the state court proceedings. Supreme Court Rule 14.1(h) requires a petitioner to set forth in his Petition for Writ of Certiorari the stage of the proceedings where the federal questions were raised, the method and manner of raising them, and how they were passed upon by the court, with specific references to the places in the record where the matters appear. Petitioner's pleading is devoid of such references to the record.

In his Petition for Writ of Certiorari, the Petitioner lists two questions presented for review. They are:

(a) Whether state officials acted for impermissible reason by suspending attorney's license for exercising a constitutional right;

(b) Whether state officials violated due process requirements by bringing charges under the pretext of a lawful motive.

For purposes of certiorari under subsection (a) of §1257, the validity of the state's statute must have been "drawn in question," or a federal title, right, privilege, or immunity must have been "specifically set up or claimed." As noted earlier, the instant Petition contains no reference to how the "claim" was treated in the state court because Petitioner did not appropriately raise or argue any federal constitutional claims.

Furthermore, Petitioner failed to comply with the state rule concerning the method of raising constitutional challenges to court rules. As stated in Mr. Justice Harlan's dissent in *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968), 334, in determining whether a question was "substantially set up or claimed" within the meaning of §1257, "it is relevant and usually sufficient to ask whether petitioner has satisfied the state rules governing presentation of issues."

The Petitioner has not satisfied the applicable state rule. The Petitioner challenges the August 31, 1995 Order of the Supreme Court of Pennsylvania suspending him from the Bar of the Commonwealth for one year and one day. Rule 522 of the Pennsylvania Rules of Appellate Procedure, entitled "Notice to Court Administrator of Pennsylvania of Challenge to Constitutionality of General Rules" requires that:

> It shall be the duty of a party who draws in question the constitutionality of any general rule to give notice in writing to the Court Administrator of Pennsylvania in accordance with the procedure prescribed in Rule 521 (Notice to Attorney General of Challenge to Constitutionality of Statute).

Pennsylvania Rule of Appellate Procedure 102 defines "general rule" as "a rule or order promulgated by or pursuant to the authority of the Supreme Court." Under this definition, the aforementioned Order of the Supreme Court of Pennsylvania is a "general rule." Petitioner did not comply with Pa.R.A.P. 522.

The Petition before the Court is completely devoid of any reference to what stage of the proceedings at which Petitioner appropriately raised the federal questions sought to be reviewed, the method or manner in which they were raised, or the way in which they were passed upon. Further, Petitioner did not "specifically set up" or claim the federal questions he raised by complying with the state rule requiring him to give written notice to the Court Administrator of Pennsylvania.

By not complying with §1257(a), Supreme Court Rule 14.1(h), or Rule 522 (of the Pennsylvania Rules of Appellate Procedure), Petitioner has failed to advise this Court whether these federal questions were previously raised, and if so, how, or whether they were properly preserved.

Since the Petitioner did not comply with either the statutory provisions or the State or Supreme Court Rules for properly preserving and presenting his federal questions, any issue contained in his Petition for writ of Certiorari is not properly before this Court for consideration and his Petition for writ of Certiorari should be denied.

VIII. CONCLUSION

Since the Petition for Writ of Certiorari is procedurally defective, it should be denied.

Respectfully submitted,

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